Vol 33 No 5 February 2018

it's our business

newspad of the Employee Share Ownership Centre

Minister ducks HMRC haggling claim over Roadchef EBT payout

A Treasury minister ducked an MP's accusation in Parliament that HMRC is using arm-twisting tactics in negotiations with the Roadchef EBT trustee over whether the long-suffering employees' compensation will be paid free of tax or not.

The Commons confrontation came in a 20 minute adjournment debate when **Airdrie & Shotts SNP MP, Neil Gray**, accused HMRC of telling the trustee that Roadchef employee beneficiaries would not have to pay any tax on any compensation payout, **provided** the trust did not pursue it for return of the £10m CGT tax bill paid by former Roadchef md and ceo, Tim Ingram-Hill, on his sale of Roadchef shares, which the High Court later ruled he did not own.

Mr Gray asked **Mel Stride, financial secretary to the Treasury: "**Can the minister understand my concern at HMRC's approach to this?" but Mr Stride said it was not for him to comment on such an allegation "that very much strays into the area of confidentiality around discussions between our tax authority and a particular organisation".

Government business managers permitted the short debate to go ahead late on December 19, just two days before parliament went into pre-Christmas recess. As a result, the debate received hardly any media coverage.

Earlier in the debate, Mr Gray explained how md (later chairman and ceo) Ingram-Hill had taken over responsibility for the Roadchef Esop after the premature death of its originator, former ceo Patrick Gee.

"When Roadchef was sold to the Japanese company Nikko about a decade later, Mr Ingram Hill made approaching £30m (£26.8m) on the shares that should have been made available to Roadchef employees. In 2000, he made the £10m tax payment on his share windfall to HMRC, *a fact which only came to light much later on.*

"On discovering the unjust enrichment, the trust then took Mr Ingram Hill to the High Court, and Justice Proudman found that he had acted in breach of trust and, crucially, that the shares were never his in the first place—they were the employees' shares," Mr Gray told MPs.

"The purchase of the shares in the sale of the company was therefore void and—this is important—*the £10m paid to HMRC belonged to the beneficiaries, not Mr Ingram Hill***.** Subsequent to the High Court ruling, Mr Ingram Hill settled with the trust, which then notified HMRC that the settlement had occurred and that it intended to payout to its beneficiaries, who total c. *4,000* current and former Roadchef employees.

"The trust wished to clarify that there would be no tax implications from the payments being made, thinking that this would just be a formality, but the response from HMRC was rather surprising. *HMRC said that it would be happy to waive any tax implications for the beneficiaries as long as the trust did not pursue it for the £10m paid in tax by Mr Ingram Hill*. That was the first time that the trust had been made aware of such a tax payment.

"The trust, acting on behalf of its beneficiaries, has challenged HMRC on the £10m payment, which should be repaid to the trust with interest," the SNP MP added.

However, the minister told him: "I assure the House that HMRC is working hard towards resolving this issue. I am constrained by HMRC's duty of maintaining taxpayer confidentiality. HMRC will, however, continue to correspond in writing with the trustee chairman and assist the employee benefit trust's representatives.

"It may be helpful if I first set out the typical tax treatment for the sale of shares from EBTs. When a person exercises an option to obtain EBT shares, this is *often* chargeable to income tax and NICs, based on the difference between their valuation when obtained and

From the chairman

In this issue, I urge employees to put pressure on the big supermarket groups to install Company Share Option Plans (CSOP), at a time when thousands of full-time jobs in the retail sector are being lost, probably forever.

The HMRC tax-approved CSOP is easy to understand and requires no up-front payment by employees. Either the options are in the money when they vest, or they are not - in which case, nothing is lost.

It is time unions understood better how to represent the financial interests of their members. The Centre is offering them instruction on how knowledge of share schemes will help them earn their members' gratitude. Employee share ownership needs to be demanded as well as offered if we are to break new ground.

Malcolm Hurlston CBE

the amount paid for them. If the shares are sold to a third party, the sale will then be subject to Capital Gains Tax on the difference between the valuation used for the taxation of the option and the sale prices.

"Turning to the Roadchef EBT, the issue we are discussing today has a long history. Before the sale of Roadchef in 1998, the company's then chairman arranged for shares held by the EBT to be transferred to him. He subsequently sold the shares for a profit. Both the acquisition and sale were taxed appropriately at that time. The former chairman's actions were contested, and in *2014 the High Court ruled that effectively the money from the sale of shares had to be paid back, **net of tax**, to the trust for distribution to its beneficiaries.* The judgment stated that the proceeds from the shares sold had been held on constructive trust by the chairman for the beneficiaries. However, the implementation of the High Court's ruling in 2014 and the subsequent distribution of the original shareholders has proved to be very complex.

"HMRC has since been engaging with the Roadchef employment benefit trustees' representatives to determine the correct tax treatment for the trust and the relevant distribution to its beneficiaries. This involves HMRC working closely with the trust's representatives to fully explore all potential legal options to settle this matter. ***HMRC's most senior technical people have been working on different aspects of the tax position and a senior HMRC representative is regularly discussing the progress of the case with the trust's representative.*** Earlier this year, HMRC provided a technical analysis of its view of the correct tax treatment to the trustee chairman and its representatives.

"To be clear, HMRC has no interest in prolonging this matter. It is, however, legally bound to be even-handed and impartial in applying the law" added Mr Stride.

"Although HMRC has discretion as to how it goes about fulfilling its duties, as a statutory body it must apply the law fairly and collect the taxes set out in legislation. When the law is unclear, HMRC can exercise some discretion to ensure that it gives effect to Parliament's intent. For example, HMRC can exercise discretion to give up some tax if there is an unintended or unforeseen effect on a small group of taxpayers or which will be apparent only for a short time. This discretion is by its nature limited and would not be applicable in all circumstances—for instance, it would not apply if the courts had made a specific ruling on a particular issue. I can appreciate the frustration of those affected, who naturally want a swift end to this matter, which I hope there will be. I hope I have been able to provide at least some reassurance that HMRC is doing everything in its power to resolve this issue in a fair and timely manner."

Centre chairman Malcolm Hurlston said: …*The minister has provided "some reassurance" but clearly not enough for the MPs or their constituents innocently entangled in HMRC's soul searching. Has nobody heard of the Gordian Knot?* Mr Gray told the minister: ***"This is about natural justice, and it is not good enough for HMRC to say that it is too difficult or that it is precedent setting, or to give any of the other excuses offered so far. This is not HMRC's money. It is my constituents' money—it is our constituents' money—and it should be returned to them without delay.***

"If HMRC does not settle the case, it will stand accused of laundering illegally obtained funds at the expense of those who have been defrauded. As far as I can see, the £10m (tax payment) figure has not been mentioned in all the correspondence between MPs, Ministers and HMRC. At best, it would appear that officials are failing to appraise MPs of the full facts, which is a very serious matter indeed. I believe there is a role for the chair of the Treasury Committee to play in getting the lead officials at HMRC to answer for the delay.

He added: "Twenty of my constituents, most of whom live around the service station at Harthill, have contacted me about the Roadchef case, but I am sure that more are waiting for their payment. They include Mrs Margaret Gibson, who lists some of the things that she has struggled to do in recent years that this money would have helped with, including borrowing money for home improvements, helping her son to pay for his wedding, or helping her and her husband get by during periods of unemployment. She considers it a ridiculous amount of time to wait for what is rightfully hers, and I completely agree. Linda McLeod and Margaret Main pointed to the time it has taken for their money to be returned, but they highlighted too the number of former colleagues who have sadly passed away and will not get the benefit their hard work merited. Caroline Todd desperately hopes this gets resolved soon so that her mum, who is getting older, is able to enjoy her own money. Margaret Forsyth just wants HMRC to settle matters so that she can have some security, a sentiment echoed by Jane Paxton and Elizabeth Campbell. Joyce Simm's husband has been receiving cancer treatment for three years, and she has been out of work while she cares for him. They have had to survive on pensions and savings, which are fast disappearing.

"It is worth mentioning someone else who has been affected by this case. The former Roadchef company secretary, Tim Warwick, blew the whistle on what the then ceo was doing before there was any kind of whistleblower protection. Exposing this affair effectively ended Mr Warwick's career, and we should all thank and pay tribute to him for his efforts," added Mr Gray.

**The High Court ruling in late January 2014 did not resolve the issue of whether only the original 350 Roadchef employee Esop participants should get the compensation. When, after further delay, it emerged that up to 4,000 past and present employees could qualify for compensation, Mr Ingram-Hill, to his credit, insisted that the Esop participants should get the lion's share of the pot. He had earlier agreed to an out-of-court settlement payment – an amount which remains undisclosed - with the EBT trustee. The*

Roadchef Esop participants have now been waiting almost 20 years to receive their payments.

EVENTS

Share schemes for trustees: Jersey, May 2

The Centre's next Jersey share schemes and trustees conference, held in association with **STEP Jersey**, will be on Wednesday May 2 at the Pomme d'Or Hotel in St Helier.

The annual half-day conference is an industry leading networking and learning opportunity for all those interested in share schemes and EBT trusteeship.

The programme will cover the latest taxation, legal and regulatory issues. Confirmed speakers include: David Pett, Temple Tax Chambers; Graham Muir, CMS; Pett Franklin; and Paul Malin, Haines Watts.

Attendance costs £375 for Centre/STEP members and £480 for non-members.

Book and pay by the end of Friday March 2 to take advantage of one of our early bird discounts:

- 50 percent off a third delegate from the same organisation; or
- 10 percent off the total.

To register your interest in attending, email: events@esopcentre.com, or call 020 7239 4971.

Paris *newspad* summit June 21-22: Call for speakers

Confirmed speakers at the next newspad international employee equity summit in Paris on Thursday & Friday, June 21-22, include: **Esop Centre, International Association for Financial Participation (Fr), David Craddock Consultancy Services, Linklaters**, **Pett Franklin**, **RM2, St Gobain** and **White & Case**. The venue will be Linklaters' offices at 25 rue de Marignan, just off the Champs Elysees.

newspad invites Centre members to email proposals for speaker presentations to fill the remaining slots at the event. You may choose a solo 30 minute slot, perhaps covering an important technical issue affecting international employee share schemes, or a 45 minute employee equity case history slot in which a client joins the main speaker(s) at the podium. The programme will contain more than a dozen slots and open debates, spread over the two days. Speakers may suggest their own topics.

Generic subject areas will include:

- Share plan regulation – Mifid II and GDPR - how are they bedding in?
- Case histories featuring latest developments in employee equity plans
- Executive equity remuneration: has the tide turned? Are LTIPs doomed?
- Re-casting all-employee share plans post a merger/ takeover
- Share plan administration techniques
- Employee communications in share plans - overcoming cultural differences
- The likely impact of Brexit on international employee equity plans
- Benchmarking international share plans - getting value for money
- Latest developments in French international employee equity plans
- Business succession in European privately owned companies
- Employees and economic democracy
- Restricted Stock Units - are they best used in international equity plans?
- New ways to improve take up

Don't delay if you plan to speak in Paris, as slots are filling up rapidly. You can view a programme outline on the event page of the Centre's website www.esopcentre.com.

Practitioner **speakers** will pay £245* each and may invite a plan issuer client as joint speaker, *free of charge*.

Delegate fees*:

Centre member practitioners: £395 each

Non-member practitioners: £615 each

Plan issuer representatives Free (£10 admin charge)

**These fees are not subject to VAT, because this event takes place outside the UK.*

An informal delegates' pre-conference dinner will be held in a central Paris restaurant on **Wednesday** evening (June 20) at 2030. Centre chairman Malcolm Hurlston will open the event on Thursday at **1045** (to allow travel time for delegates arriving in Paris by *eurostar* on Thursday morning). Linklaters will provide coffee/tea on both mornings, a buffet lunch for all participants and an informal hosted drinks reception, starting 1740 on Thursday. The Friday morning session will run from 0930 to 1300.

Leading the Linklaters' team will be **Rasmus Berglund** from the London office and **Lionel Vuidard** and **Géric Clomes,** from Linklaters' employment and incentives division in Paris.

If you wish to stake your claim to speak at this key event, please contact the editor of newspad, Fred Hackworth at fhackworth@esopcentre.com.

Judging by last year's attendance, we would expect around 55 people to attend.

MOVERS AND SHAKERS

Grant Barbour is global head of the private client division at **Ocorian.** Grant was previously md of Ocorian for 17 years.

Following Estera's completion of the acquisition of the Heritage Financial Services Group in November 2017, Heritage has rebranded to **Estera**. Ceo Farah Ballands said: "This change in identity is an important step in bringing our companies to deliver a broader range of services from an enlarged geographic footprint. We now have more than 500 committed professionals working from 12 offices across the globe, all of whom are able to deliver the service quality wanted in a time zone that suits clients.

John Meehan celebrated his third anniversary as md of Centre member **Global Shares,** a leading equity compensation software solutions provider, which has just opened an office in Hong Kong, its first in Asia. Global Shares employee numbers have risen from 68 in 2015, to more than 150 staff currently.

Teresa James (Cert. ICSA) has moved from Sainsbury's to a new position as interim share plans manager at **Ladbrokes Coral Group**

UK CORNER

PM targets 'greedy' execs post Carillion collapse

The collapse into compulsory liquidation of contractor giant **Carillion** threw the spotlight once again onto UK corporate governance – or the painful lack of it – in many top companies, despite recent additional regulations and hand-wringing in Whitehall. Nigel Mason, partner at Centre member **RM2**, said of Carillion's demise: "*Perfect storm: income recognition malleability plus weak bonus claw-back provisions. Another RemCom asleep at the wheel. My hamster could do better.*"

Former Carillion ceo Richard Howson received a £1.5m pay package — including a £245,000 bonus and a £346,000 share-based award — just a year before it went bust, but the two latter amounts, totalling almost £600,000 may not be recovered unless he agrees to return them.

A letter from Robin Ellison, chairman of Carillion's pension scheme trustee, revealed that the scheme's deficit could reach almost **£1bn**, more than 50 percent higher than the £590m figure reported by the firm. MPs questioned why the company used cash flow problems as an excuse for not making higher pension contributions in 2011 and 2013, when Carillion paid more than £70m in dividends to investors.

As public anger rose, the **Insolvency Service** announced that any executive bonuses or severance payments due beyond Carillion's liquidation date would not be paid out. Instead, recently departed Carillion executives will have to take their place in the long queue of creditors if they wish to pursue their claims for promised bonus and severance salary payments.

The FT showed how the bonus recovery rules changed between 2015 and 2016. "A malus provision is operated that gives the remuneration committee the right to reduce any deferred bonus awards which have not yet vested in relation to circumstances of corporate failure," said the *2015 annual report*. However, the following year's annual report showed how Carillion's internal rule had changed: "Malus or clawback may be applied if: (1) the results for the year in respect of which the award was made have been misstated, resulting in a restatement of the company's accounts, or (2) the participant is guilty of gross misconduct."

Last autumn, newspad pointed out that Carillion's 2016 annual report had commented that the "minor" changes were designed to give *"sufficient flexibility to support succession planning and potential changes to business needs over the next three years."* George Orwell would have been proud of that sentence. Previously Carillion could ask for cash back if the business went bust, but the revised policy said it could only do so in the event of gross misconduct or if the financial results had been misstated.

"As investment group AJ Bell noted, the 2016 bonus mechanism paid out in spite of zero scores for executives on key performance metrics. *Mr Howson achieved no score for earnings per share, cash conversion, nor customer service ratings — everything that Carillion desperately needed.* Former finance director Richard Adam managed *no score for earnings and cash, but for net debt too* — precisely what Carillion had too much of. *Still, they were paid bonuses on other measures, which cannot now be recovered through malus — no matter how malodorous*."

According to Bloomberg's company website there was a "Carillion Employee Share Ownership Plan, based in Wolverhampton," but there was no info about this on the company website. It certainly was operating share-based incentives for the top brass. **PM Theresa May** waded in. She said that "tough new rules" would be introduced to tackle the behaviour of "executives who try to line their own pockets by putting their workers' pensions at risk – an unacceptable abuse that we will end".

She ordered the **Business Department** to investigate whether some companies are buying back their own shares in the market in order to make equity incentive bonus targets easier to attain. **Business Secretary**

Greg Clark said: "While there are a number of valid reasons why a company would use these schemes, there are concerns that a minority of companies are using them to inflate executive pay and that they can crowd out investment. This new research will help to understand how companies use share buybacks and whether any further action is needed to prevent them from being misused. This review is part of the broader package of corporate governance reforms announced in August 2017 to address concerns that executive pay can sometimes be disconnected from company performance."

The pensions regulator may be given specific powers to issue punitive fines on company directors in cases of clear wrongdoing.

She said: "*Too often we've seen top executives reaping big bonuses for recklessly putting short-term profit ahead of long-term success. Our best businesses know that is not a responsible way to run a business and those who do so will be forced to explain themselves.*"

Among radical potential measures that have been discussed in Whitehall are plans that would leave individual executives personally liable for hefty financial punishments if their companies' pension schemes collapse. One proposal is for regulators to be empowered to claw back executives' bonuses after a company and its pension system go to the wall.

Mrs May added: "A free market – only works when everyone plays by the same rules. While I don't believe the government should involve itself in the day-to-day management of businesses, the state can and should help to rebalance the system in favour of ordinary working people. Since I became prime minister, that's exactly what I've been doing. Indeed, no government has done more than this one to take action in this area. Everyone is now able to see when companies have significant shareholder opposition to bosses' pay. ***In the spring, we will set out new tough new rules for executives who try to line their own pockets by putting their workers' pensions at risk – an unacceptable abuse that we will end.*** By this time next year, all listed companies will have to reveal the pay ratio between bosses and workers.

Companies will have to explain how they take into account their employees' interests at board level, giving unscrupulous employers nowhere to hide. For the first time, businesses will have to demonstrate that they have taken into account the long-term consequences of their decisions. Too often, we've seen top executives reaping big bonuses for recklessly putting short-term profit ahead of long-term success. Our best businesses know that is not a responsible way to run a company and those who do so will be forced to explain themselves."

Had Carillion been operating a Share Incentive Plan, participating employees would have lost the money they would have spent buying its now worthless shares.

The **Institute of Directors (IoD)** savaged the "highly inappropriate" pay awarded to directors running Carillion. The IoD accused directors and shareholders of failing to provide "appropriate oversight" of the company, which is involved in a host of major government projects and vital public services. Roger Barker, IoD's head of corporate governance, said the collapse of the company "suggests that effective governance was lacking at Carillion". He added: "We must now consider if the board and shareholders have exercised appropriate oversight prior to the collapse. There are some worrying signs. *The relaxation of claw-back conditions for executive bonuses in 2016 appears in retrospect to be highly inappropriate. It does no good to the reputation of UK business when top managers appear to benefit in spite of the collapse of the organisations that they are responsible for."*

Carillion employees recruited in the last few years will almost certainly have a defined contribution pension which leaves them better protected post the liquidation as the savings in the scheme belongs to the employee and not the employer. Employees with a final salary pension scheme will be protected by the state-backed Pension Protection Fund, which will takeover the Carillion scheme. The PPF (*i.e. the taxpayer)* will pay the full basic pension of anyone who is already receiving their pension. However, for those yet to reach retirement age, payments are capped at 90 percent maximum of a member's pension and there is a monetary cap currently £34,655 pa - up to which level, but not beyond it - the 90 percent rule applies.

Shareholder democracy plea

More than 100 **Royal Bank of Scotland (RBS)** investors threw their support behind plans for a shareholder committee meant to address corporate governance issues at the UK lender. ShareSoc, the UK's individual shareholder society, hopes that it will be put to a shareholder vote at the bank's agm in May. The group said current methods of shareholder engagement – including "cosy chats with selected shareholders behind closed doors" – do not work for the broad shareholder base, adding that it is unclear whether investors are receiving the same information or if it is being 'spun.'

ShareSoc chairman Mark Northway said: "Shareholders, including individuals, deserve a new approach; one with greater involvement and more effective input from them as ultimate owners. RBS, given its incredibly poor track record and consequent taxpayer support, should now be leading from the front in governance matters." ShareSoc claims RBS had been "hiding behind tenuous, expensive legal arguments" in order to block its creation. **Cliff Weight**, the group's director and campaign manager, said: "This year, we are hoping RBS will engage with us and work constructively in developing an improved corporate governance framework. Since ShareSoc first engaged with RBS in December 2016, there have been several positive developments which we recognise and applaud, but there remains much more to be done on shareholder democracy."

ShareSoc condemned RBS for a raft of alleged failings that included -a culture of "excessive risk, short-termism, greed and irresponsibility", as well as extravagant bonuses and executive pay that had "impacted the brand." The lender was criticised too for allegedly treating customers unfairly, mis-selling mortgage-backed securities in the US as well as payment protection insurance (PPI) in the UK, the Libor-fixing scandal, and the ongoing controversy over how its global restructuring group treated SME customers. That is in addition to concerns over top-level diversity, with only four women included in its *"pale, male and stale"* 14-strong board, the shareholder group added.

New Treasury ministerial team

The new **Treasury** ministerial team, post the recent government reshuffle, is:

Chancellor of the exchequer:
Rt Hon Philip Hammond MP
Chief secretary to the Treasury:
Rt Hon Elizabeth Truss MP
Financial secretary to the Treasury:
Rt Hon Mel Stride MP
Economic secretary to the Treasury:
John Glen MP

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Letter to the editor

The lead article in January's newspad ("Corbyn's threat to UK share schemes"), especially the headline, smacked of politically biased reporting worthy of the Daily Mail. The writer is conflating two things: a Corbyn Labour government's possible nationalisation of certain utilities, which would surely have to be conducted on commercial terms, and the resulting termination of those companies' employee share schemes. Whether nationalisation is the right approach is a valid question. My beef is that the writer is trying to suggest that Labour, even Corbyn's Labour, is hostile to employee share schemes. That is unfounded.

Corbyn's team have indicated plenty of support for employee share ownership. John McDonnell, in a speech two years ago, said that a Labour government would extend employee ownership opportunities through a "right to buy". Tom Watson's "Future of Work" Commission covers different ways to expand employee share ownership. The left leaning IPPR think tank published a report just before Christmas on how employee ownership trusts could be boosted by linking them to higher levels of pension savings. (Massive interest to declare here: I co-authored the report). And let's not forget that it was a Labour government, albeit a New Labour version, that introduced the UK's flagship schemes - SIP and EMI.

Of course, the other main parties also have strong records in promoting employee share ownership, the Lib-Dems especially punching above their weight. My point is that, as promoters of ESOPs and their power to spread capital, we benefit hugely from the cross-party support. Companies will only adopt share schemes if they can be confident in their longevity which only political consensus will bring. So let's be constructively critical of policy ideas but please not stoop to misleading political headlines.

Nigel Mason
Director, The RM2 Partnership

Malcolm Hurlston replies: "It is good to see Nigel Mason taking issue with the lead story in last month's newspad. I welcome debate.

Newspad is journalism not disguised puffery. As the likelihood of a Corbyn regime increases it makes sense to take Labour policy announcements seriously. If Royal Mail were nationalised we would have nearly 150000 fewer employee owners - bad news for them, even if compensated, and for those of us who want a share plan world in which the wages of capital reach all employees.

Newspad is happy to confirm that Labour supports employee share ownership in the private sector, but that was not what was being written about on this occasion."

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More snouts in the trough

Directors at **Berkeley Group** could receive a total **£127m** in bonuses between now and 2023, despite the house-builder putting a cap on its controversial incentive scheme after protests by investors. The biggest winners will be Tony Pidgley, Berkeley's founder, and ceo Rob Perrins who are in line to make £48m and £33m respectively. The pair were among five directors who shared £21.25m last autumn and among six who shared £92m in September 2016. It followed the furore over rival builder **Persimmon** where an uncapped LTIP vested big time for ceo Jeff Fairburn -and 140 other executives and senior managers - currently valued at ***£133m*** in his case. The huge payouts come despite a chronic shortage of homes.

Berkeley, one of Britain's biggest builders, made a £812m profit last year when it sold 3,905 properties at an average of £675,000. The Berkeley bonus scheme was put in place during the downturn in 2011 and began to pay out five years later. Since 2011 the share price has soared from £13 to £42. After furious protests, Berkeley halved the maximum amounts that could be paid, but only after dishing out £92m in bonuses. Five executives will still receive a total of around £21m each year. It means the directors may trouser a total of £240m from the scaled back plan, assuming they hit performance targets.

Persimmon ceo Jeff Fairburn collected the first £50m worth of shares on New Year's Eve from the record-breaking bonus scheme described as "obscene" and "corporate looting". He will qualify for another £60m of profits from the scheme this year. He repeatedly refused to state whether or not he intends to donate any of the money to charity. "I consider my plans for any charitable giving to be a private matter and I do not wish to comment any further on that," Fairburn said. "*You've got to put this into context of what has been achieved. I do fully accept that the potential payouts under the scheme for top individuals are very significant. The scheme is about 140 individuals, and it's always a team effort,*" he added. "Of course I'm responsible at the end of the day and the business has done very well. We've worked very hard as a team to get to where we are now, and we continue to be invigorated and we continue to push the business forward." The scheme –the UK's most generous-ever bonus payout – will hand more than **£500m** to those 140 senior staff. More than 80 are expected to receive payouts in excess of £1m. The fd, Mike Killoran, is to receive £86m and the md, Dave Jenkinson, is in line for £48m.

Garry White, commentator at stockbroker **Charles Stanley**, said the scale of the bonuses meant the Persimmon management "*could easily be accused of corporate looting*". **Liberal Democrat** leader, Vince Cable, said: "The scale of this bonus is obscene", adding that it was an outrage that Fairburn could profit so much from a government subsidy – a reference to the help-to-buy scheme introduced in 2013 by former chancellor George Osborne to help home buyers.

Commenting on the mega LTIP bonuses at Persimmon, Jonathan Ford, writing in the *Financial Times* said: "*Boards should recognise that they are not appointed simply to rubber stamp formulas that are devised by consultants. They are there to exercise judgment and they cannot perform that role if they tie themselves in knots with elaborate forward-looking employment contracts. They need to abandon the thinking that showering executives with gold is somehow the only way to get a company to flourish. The evidence says otherwise. A recent Lancaster University Management School survey found that, over a decade, the correlation between performance and pay among FTSE 350 bosses was negligible despite the growth in performance based payments. Returns on capital barely budged, yet pay rose 80 percent.*

"First, there is the basic misapprehension that they solve the so-called 'principal-agent problem' — getting executives to act in the interests of owners rather than just themselves. In practice, incentivising managers to perform certain tasks simply leads them to prioritise those tasks over others. Setting metrics for years in advance can be counter-productive. A myth has grown up that ceos will not put in the effort unless they have a juicy LTIP in their back pockets. Shareholders should call this bluff and scrap performance pay for the most senior people."

"After the Persimmon shambles, one hopes boards will remember to impose caps on long-term incentive schemes. But a better response would be to abolish LTIPs," wrote Nils Pratley in the *Guardian*. "LTIPs are a terrible way to measure executive performance. The value of the rewards is overly determined by the share price at the timing of the grant. Pay committees barely police the gaming of the system via share buy-backs. As Persimmon has demonstrated in spades, outside events introduce lottery-like features. '*We conclude that LTIPs should be phased out as soon as possible*,' said the excellent report by the **Commons** business select committee last April. "You will even find a few enlightened fund managers who share the view that LTIPs have failed to improve corporate performance one iota and are designed to spit out something, whatever the weather. Unfortunately, the government then offered the most timid version of reform in its response to its own green paper. Quoted companies, it said, should "provide a clearer explanation in remuneration policies of the range of potential outcomes from complex, share-based incentive schemes"... in other words, carry on much as before. Just get rid of LTIPs. Force remuneration committees to design schemes that don't produce perverse outcomes. Persimmon is an extreme example, but the whole LTIP system is rotten."

Rail chiefs troughing too…………

Bumper pay deals for 2017/18 for rail company chiefs include a package worth up to £2m for **Great Western Railway**'s Tim O'Toole and up to £2.5m for Martin Griffiths, boss of **Stagecoach**, which runs **East Midlands** and part-owns the **Virgin East Coast** and **West Coast** franchise. Rupert Soames, ceo of **Serco**, which operates the **Caledonian Sleeper** and part controls **Merseyrail**, is in line for a maximum pay package of up to £5.4m if he hits all his performance targets.

One of the biggest earners is Martin Griffiths, ceo of Stagecoach, whose basic salary, pension and benefits package for 2017/18 is £892,000 – but that could rise to a maximum of £2.5m if performance targets are met. In 2016/17, he received £1.3m, including a £302,000 bonus. His firm operates the East Midlands franchise which raised the cost of an anytime return from London to Derby, by £12.50 or almost *seven percent* to *£194.50*. Meanwhile, Serco's Soames – Sir Winston Churchill's grandson – will receive a minimum of £1.13m for the 2017 calendar year and could receive almost £5.4m if maximum performance targets are met. In 2016, he was paid £2.2m in salary, bonus, pension and other perks. Tim O'Toole, ceo of **First Group** which holds the Great Western franchise, received an annual package of £1.26m in 2016/17 including a basic salary of £846,000. He did not receive a bonus, but his pay has still surged by more than a fifth since earning £1m in 2011.

Some rail bosses *have* shown restraint. David Brown, ceo of **Go-Ahead,** whose railway arm **Govia** holds franchises including the beleaguered **Southern,** received £801,000 in 2016/17. Mr Brown has not taken a bonus for the two years to July 2017 due to Southern's poor performance and strike disruption. But he could still receive a bonus worth up to £829,000 this year – or 150 percent of his £552,600 basic salary. The earnings of some rail bosses have increased substantially over the past five years. In 2011/12, Sir Brian Souter, then ceo of Stagecoach, received £876,000 – including a £581,000 salary and a £272,000 bonus.

FirstGroup said its ceo's basic pay had not increased for six years. A Go-Ahead spokesman said of the company's ceo 'This is the second consecutive year in which David has declined an annual bonus.' Serco said that Mr Soames headed a large international business employing more than 50,000, that Merseyrail has 'among the lowest fares in the country' and that its Caledonian Sleeper service is being 'transformed with the introduction of new carriages in 2018'. Stephen Joseph, of the *Campaign for Better Transport*, described the rail industry as a 'gravy train', adding: 'It's not much of a happy New Year for rail passengers who are facing the highest fares rise for five years.'

*Energy watchdog **Ofgem** gave a record number of bonus payments to its staff at the same time as household fuel bills were squeezing household budgets. As families struggle to cope with £1,000-per-year home energy bills the boss at the quango is being paid more than £200,000 a year. In addition, those of its staff who qualified for a bonus took home an average of £1,173 extra in their pay packets. Ofgem, which regulates the market so the big providers do not rip off consumers, revealed in its accounts the largest bonus paid out last year was £12,500. Ofgem is headed by ceo Dermot Nolan, whose executive team has shared a total of £135,000 in bonus payments over the last three financial years. Yet it has come under fire for being too weak with the energy giants who have been criticised for being quick to hike energy prices when oil and gas costs rise but much slower to drop prices when the cost of the raw materials drops. Its chiefs have come under attack for not ensuring the energy firms do more to ensure customers are placed on cheaper tariffs rather than being left with uncompetitive deals. The bonus fund for Ofgem's staff has soared almost 35 per cent since 2010 from £664,260 to last year's figure of £898,056. In the same time the number of staff picking up bonus payments has more than doubled to 765, who took home an average of £1,173 extra each, while the average Ofgem employee's total pay packet was £40,000. Dermot Nolan receives an annual pay package of £205,000, while chairman David Gray is paid £160,000 per year.

YBS Share Plans make the running

YBS Share Plans recorded another successful year for the team, attracting 17 new all-employee clients and taking its discretionary share plan client list to a respectable number in just 15 months. Many of the new all-employee plans who joined YBS Share Plans did so at the time of IPO, which is an area of specialism for the YBS team. "We have an experienced team and are structured so that we have the ability to work at pace," said **Ainsley Melaugh** business development manager.

Email: azmelaugh@ybs.co.uk

Executive reward: smoke and mirrors

What's really happening to top company pay? ask **Damien Knight, Harry McCreddie** and **Margarita Skripina** in an article in *Boardwalk*, the client bulletin of Centre member **MM & K,** the remuneration and share plan consultancy. The authors accused the Press of having waged a relentless campaign against perceived excesses in executive remuneration. "Back in 2012 they latched onto a spurious Incomes Data Services so-called average increase for FTSE 100 executive directors of 49 percent, when the median increase in realised total remuneration was eight percent and the increase in awarded total remuneration was just two percent. The newspapers had all reported that directors had awarded themselves a rise of 49 percent. David Cameron and the Archbishop of Canterbury joined in the condemnation and the reverberations are still being felt.

"The November 2017 **Manifest** survey has now been published. It shows the single total figure of remuneration actually fell by 15 percent in the previous year - Where are all the newspaper headlines? - Not likely, since the media have got the Persimmon egregious share option plan to confirm their beliefs about executive greed, complete with remuneration committee resignations. To be fair to the **High Pay Centre** which runs its own survey with the **CIPD**, it has reported an average fall of 17 percent for FTSE 100 ceos, although it attributes this to recent political and shareholder interest in the subject.

"In fact, remuneration committee restraint has been exercised for several years. Meanwhile on December 19, the **Investment Association** launched the new Government-inspired public register of 2017 resolutions that gained less than 80 percent of the vote at an agm. The IA PR headline was : "*From the agms and general meetings (GM) held in 2017 by more than 640 FTSE All-Share companies, over one in five (22 percent) of companies listed on the FTSE All Share feature on the Public Register, due to having at least one resolution that received over 20 percent dissent or was withdrawn…Pay-related issues top the list of shareholder concerns, with almost four out of ten (38 percent) resolutions listed on the Register being due to high votes against pay-related resolutions."*

"The Press loved this, with the *Guardian* and *Evening Standard*, amongst others, talking about a shareholder revolt against continuing 'greed'. We analysed the register in depth and formed different conclusions: NB some companies had more than one resolution that failed the test. This is hardly a shareholder revolt. The proportion for FTSE 100 companies alone is, unsurprisingly, a little higher (11 percent). But 80 percent is a pretty arbitrary hurdle, considering it only takes 75 percent to pass a special resolution such as changing a company's articles of association, and 51.9 percent got the UK to leave the EU! We looked to see what the result would be if the bar were set at 75 percent. The number of companies with a remuneration issue would fall to 7.7 percent (ten percent for the FTSE 100). We investigated whether there is any relationship between company performance and the failure to achieve 80 percent on the remuneration report resolution. There is some linkage. We looked at the FTSE top 30 to measure the relationship between the total remuneration paid to the ceo in the past three years and the total returns to shareholders over the same period. All (except HSBC) seem to have paid above average for the returns received. Of the value-creating companies, in only one did the ceo receive remuneration which was more than one percent of the value shareholders received (Sky plc 1.6 percent). The average is less than one tenth of one percent. No wonder there is no shareholder revolt – investors do not worry about pay ratios when ceos come so cheap!

"Total remuneration awarded fell from 2011 and has been completely flat for the past three years. The Government will no doubt claim this is a consequence of the new reporting regulations in 2013; the Investment Association will probably think it is due to the report of its working group in 2016 and its new guidelines and the High Pay Centre thinks it is a result of its own lobbying. But the truth is it is all down to remuneration committees and the restraint they have shown in the past five years."

*Corporate governance has become political, for the government is now actively engaged in shaping governance policy, including executive remuneration policy, around social justice/injustice, claimed a separate article in *Boardwalk.* The UK's shareholder-focused corporate governance model was now threatened, as shareholder expectations were seen to encourage short term-ism at the cost of sustainability, it said. The emphasis instead was on directors' responsibilities and clearer information about how directors, including remuneration committees, had discharged their responsibilities to stakeholders and generally. "Regarding the way companies choose to pay directors, little has changed; there are no changes to the requirements for a binding vote on executive pay. The proposal to replace LTIPs with restricted stock is rejected; companies and shareholders should consider alternative structures. Extending good governance principles to private companies is new but only the largest companies are affected. In our experience, many private companies have already adopted good governance principles," said MM & K.

"The sanctity of *comply or explain* was retained, with greater emphasis on clear explanations. This need not result in longer narratives, which nobody wants. It will be a good result if companies take the opportunity to use straightforward language and graphics. The **FRC** published a consultation document to which responses are required by February 28 and MM&K is submitting a response.

"The Government seems minded to retain a voluntary system supported by comply or explain but it has agreed to Code changes and proposes legislation, which sets a precedent for a Government of a different colour to follow A Labour government might introduce firmer measures (perhaps legislation) to impose: ─ a cap on ceo pay ─ a cap on the multiple of ceo pay to average employee's pay ─ penalties for non -compliance ─ a limit on the Corporation Tax relief for executive pay (similar to the US) and regulations requiring worker representation. In a wider context the FRC is to work with business bodies to develop a voluntary governance code for large private companies As a result, large private companies may have to publish pay data. Legislation will require all companies (public and private) to explain how their directors take into account the interests of non-shareholder stakeholders (Section 172 CA 2006)."

EMPLOYEE OWNERS

In this issue, *newspad* launches a new section on employee owners. The move is prompted by the Esop Centre's plan to create an Association of Employee Shareholders and the rise in the number of UK companies seeking an exit solution via the **Employee Ownership Trust (EOT**). To qualify for the generous tax exemptions, owners have to transfer at least 51 percent of company equity to the workforce. More than 150 SMEs to date have sought the EOT route, including service companies, such as architectural practices, as well as more traditional manufacturing companies.

***Dan Flicos**, ceo of Cambridge based **Team Consulting**, knows a great deal about company ownership structures, having seen the medical device design and development consultancy, for which he works, transform from being a founder-owned business, through to a 100 percent staff-owned business through a staff buy-out with an added Share Incentive Plan and finally into Employee Trust ownership with a small proportion of direct ownership retained via the SIP. In six years the payroll of this dynamic employee-owned company has risen from 37 to 105 and annual turnover from sterling 4m to more than 15m. Team Consulting's work focuses on the design and development of medical devices, helping companies in areas such as drug delivery (respiratory, inhalers, parenteral, etc), diagnostic systems, surgical devices, wound care and therapeutic systems. By way of example, Team worked with OrganOx, a spin-out company from the University of Oxford, to develop a world-first device which keeps a human liver alive outside the body in readiness for transplant. Many of its employees are consultants who offer expertise in industrial design, human factors, electrical, mechanical and software engineering, and in the physical sciences. It contributes to industry and scientific discussion and has filed many patents with clients to advance technology.

The staff buy-out plus a bank loan enabled Team Consulting to establish fair value for its shares, while the SIP (offered with matching shares) created an internal market for employees to use. Was this a sustainable model for the future, Dan and others asked themselves? "As our share price kept rising, it was becoming difficult for employees to buy our shares and so we would have had to re-cycle the structure every five years or so, which we didn't fancy doing," he explained. So, finally in 2016, Team consulted with staff and shareholders before deciding that converting into an EOT was the best option for a sustainable future. "We took a lot of time and care with the staff – we've always been very attentive to staff voices - and everyone was very positive, the tax incentive was attractive – it seemed the right thing to do."

Dan admits that the fiercely competitive Cambridge environment (Silicon Fen) ensures that Team Consulting sticks to its employee ownership ethos – in order to retain key people: "We've launched E (employee) groups, providing a grass roots way for staff to really get into topics, which is about encouraging staff to think like owners. At base, an administrative employee here has as much voice as I have, because we are all equal stakeholders. We are not in the hands of distant and remote shareholders." Although he is keen for other companies to look at the EOT model, Dan warned that it was no good trying to parachute EOTs into companies in which there is no culture of employee voice or other shareholders apart from the founders. Furthermore, it is a bad idea for companies to concentrate purely on the tax reliefs, because that could cloud their judgement. "In business, if your only motivation is money, that is really missing the point," added Dan. Team Consulting, was advised on transition to an EOT by Centre member **Fieldfisher.**

***Donald Insall Associates (DIA)** is one of the many architectural practices which have taken the EOT succession route, though it was almost 30 years ago that the then sole owner and director decided to issue new shares to an EBT (which exercised an option to acquire 55 percent of the company five years later) and five senior colleagues who with him formed the board of directors. These conservation architects led other practices in the restoration of Windsor Castle after the disastrous fire and renovated Somerset House, which had been the dowdy HQ of the then Inland Revenue (HMRC). Director **Simon Charrington** told *newspad* that DIA is now 92 percent owned by the EOT. Over 30 years, its payroll has grown from 30 to 105 and its annual turnover has grown organically from £1m to £8m. The consultative nature of its work encourages the co-ownership spirit implied in the EOT, he said. Each year one third of the profit is shared out among the staff, based on a percentage of salary and the rest is reinvested for growth, development and as 'rainy day' security.

Simon explained: "The key is to keep up/refresh communication - not to vote every day on every decision, but to keep reminding colleagues of our EOT. We're all in it together and keep colleagues informed via the chairman's monthly blog of board meetings. We keep colleagues involved, participating and learning in finances and via working groups for particular management topics/responsibilities. We keep colleagues (including support staff) involved in projects, networking and bringing in new work, at all levels.

"All colleagues are consulted in producing/renewing the practice business plan and they have the opportunity to attend the bi-monthly company board meetings. Decisions come from consultations and recommendations developed by or with colleague employees. The board of directors balances these and decides what to accept, reject or what requires more work.

"All colleagues receive a share of company profits, on a fair and sustainable basis. Our three employee-colleague EOT trustees serve a term of up to three years and the EOT meets at least twice a year," added Simon.

**NB there is no all-employee share plan in many EOTs, except where the trust owns only a bare majority of the shares. Graeme Nuttall explained: "The shares are all held in an EOT for employees. Companies tend to have an all employee cash bonus plan that qualifies for income tax exemption - up to £3,600."*

Supermarket employees urged to request Esop

Centre chairman **Malcolm Hurlston** urged employees at **Sainsbury's** and **Tesco** to ask for a Company Share Ownership Plan (CSOP) to be installed by their employers.

"Your unions are being asked for understanding as jobs are being lost in widespread restructuring in the supermarket chains," said Mr Hurlston. "You deserve a special reward - a share in any upside to shareholders. A CSOP is quick and inexpensive to offer and it is the least your unions can request on your behalf."

About 25,000 jobs have been cut by the main supermarket chains during the last three years. It's only a small percentage of their 950,000 employees, including part-timers, but most of these redundancies have been full-time staff, whose lost jobs bring the biggest payroll savings.

CSOP employee participants pay nothing up front to obtain their share options, nor do they agree to save monthly amounts as in SAYE-Sharesave. So they lose nothing if, at vesting, the market value of the share has fallen considerably.

Announcements under the MAR, Disclosure, Guidance & Transparency Rules

*AIM-listed **Big Sofa**, a fast-growing international video analytics provider to consumer brands and market research agencies, announced the issue of shares and the granting of share options. 477,100 shares were issued at a price of 13.1p each to non-executive directors/PDMRs who had agreed to receive directors' fees in Big Sofa shares. Four directors collectively own more than 12 percent of Big Sofa. In addition, options over an aggregate 794,118 shares were granted to those staff who the board considered were key to the future growth of Big Sofa. These were at an exercise price of 17p per share, and with a vesting period for 50 percent of the options on December 19 2018 and the rest one year later. Big Sofa granted a further 463,235 share options to members of senior management and 1,132,354 share options to executive directors, at an exercise price of 17p per share, which vest immediately.

***British American Tobacco** (BAT) was notified by the trustee of the British American Tobacco Esop that on January 3 2018, ceo Nicandro Durante and six other directors each purchased three ords of a nominal 25p in BAT – at a price of sterling 49.11 per share via the partnership share scheme.

***CVS**, one of the UK's leading providers of integrated veterinary services for small and large animals, announced that 104,278 ords with a nominal value of 0.2 pence each were issued on January 12 as a result of the exercise of employee share options, in connection with the company's December 2014 - December 2017 SAYE scheme. In addition, 171 ords were issued on the same day as a result of the exercise of SAYE employee share options by a former employee.

***Jardine Lloyd Thompson** Group was notified that, on January 12, the trustees of the company's All-Employee Share Plan (Share Incentive Plan) allocated ten ords each to a director and four *Persons Discharging Managerial Responsibilities* in the company. These shares have been acquired by the trustees by way of market purchase at a price of 1416p per share. The Plan is a HMRC approved Eso scheme. The Trustees purchased 5,289 JLT Shares by market purchase at 1416p per share on the same date on behalf of directors and employees of companies in the Jardine Lloyd Thompson Group, including certain UK subsidiary companies.

Keller**, which employs 10,000 staff worldwide, is in discussions to acquire **Moretrench Inc,** another geotechnical contracting company operating mainly along the US east coast. Moretrench is an ***all-employee owned business and Keller was forced to go public now because the discussions were being communicated to a much wider group of Moretrench employees. Moretrench has a strong heritage of complex geotechnical projects and, in 2016, had revenue of $170m, operating profit of $9.3m and EBITDA of $13.9m (excluding US$2.3m of charges relating directly to the Esop). It is envisaged that the acquisition, should it proceed, will be funded wholly in cash using existing borrowing facilities. The deal is subject to the satisfactory completion of due diligence.

***Land Securities Group** confirmed that on January 5, ACS HRS Solutions Share Plan Services (Guernsey), acting as trustee of the Land Securities Deferred Bonus Plan Trust, purchased in the market 250,000 Ords of nominal value 10.66p each in the capital of the company at a price of £9.819 per share. The Trust holds shares for the benefit of the employees, and in particular for satisfying the vesting of awards made under the company's various employee share incentive plans. As such, Robert Noel, Martin Greenslade, Colette O'Shea and Scott Parsons as executive directors, are amongst the potential beneficiaries of the trust. Following the transaction, the trust holds 959,967 shares for the above purpose, representing 0.13 percent of Land Securities' issued share capital with voting rights.

***MJ Gleeson plc** was notified on January 9 that three directors acquired 26 ords each in the company at a purchase price of £7.97 per ord, through a profit sharing Eso scheme, approved by HMRC.

WORLD NEWSPAD

MifidII:"A fire-hose pointed at a coffee cup", claim

"The EU has introduced a truly spectacular piece of regulation,'' wrote Juliet Samuel in *The Telegraph*: "Mifid II is its name and it weighs in at a princely 7,000 pages. That's 1.4m paragraphs, or six Bible-lengths. It must surely be a contender for the longest piece of red tape ever. The purpose of the "**Markets in Financial Instruments Directive II**" is to overhaul the bowels of the entire European financial system. It will have a knock-on effect on the entire credit system and on every aspect of European economic life. Mifid II is costing billions to implement and will shape markets for decades to come, and yet almost the whole thing could be scrapped without any adverse effects whatsoever. If the EU refuses to negotiate a sensible deal on regulatory cooperation and market access for our financial sector, Britain will have to make it work without one. This is not an easy task but deregulating by abolishing Mifid II provides a very good example of where we might start. Since 2008, the EU and UK have passed swathes of new financial legislation. Some of it is necessary and valuable, but a huge amount has nothing to do with financial stability. The purpose of Mifid II is to make markets transparent so that investors have more information and it's much harder to commit crimes such as insider trading.

"Consider that last year in January alone, there were 153 m transactions involving company shares on European trading exchanges. For each of these transactions, Mifid II requires trading firms to collect 65 pieces of data, publish and store them for five years. In addition, banks and exchanges must record all conversations, chats and emails relating to each of

these trades for the same amount of time. This is just for shares. The regulation applies to millions more transactions in bonds, derivatives and other financial instruments too.

'The uselessness of this exercise is quite astounding. For one thing, it overlaps with all sorts of other post-crisis EU legislation. Another regulation, called **Emir,** already requires trading firms to collect around 40 pieces of data on all transactions involving derivatives. The 65 data points required by Mifid II overlap with those for Emir, but they are not exactly the same, so these data have to be collected, distributed and stored twice. This isn't just a burden on trading firms. It's also an enormous time-sink for regulators. *The amount of data being shipped daily from the Square Mile to the Financial Conduct Authorities is so large that the regulator cannot possibly use or search it all. It is, in the words of Simon Gleeson, a financial lawyer at* ***Clifford Chance,*** *like '****a fire-hose being pointed at a coffee cup.***'

She added: "All of this would be quite justifiable if it meant that regulators, in the event of another crisis, could more effectively assess the state of a failing bank and stop panic from spreading. But the EU has already legislated for that. In 2014, it introduced a directive requiring banks to have living wills, including a data room that keeps track of their exposures in real time, so that they can be wound up in an orderly way and reduce the chance of taxpayer bailouts. Mifid II is nothing to do with this worthy aim. Instead, it represents a shift in regulatory philosophy from an Anglo-Saxon model to a French one, in which stopping market abuse is more important that letting legitimate markets grow. Some of the new rules, post 2008, were sensible, such as the anti-bailouts directive. Others, like Mifid II and a new capital regime for insurance companies, were expensive, meddlesome and totally unnecessary. No politician has an appetite to correct any of this. Large banks will, if asked, say they'd rather stick with the new status quo. Of course they would: they have spent billions complying with the new rules and they are now a massive barrier to entry, shoring up their incumbency."

Trust company registrars to be half open

Changes to EU rules on anti-money laundering and counter terrorist financing designed to increase transparency on who really owns companies and trusts were agreed in principle by the European Parliament and the European Council. These include measures to enable trust beneficiary information to be accessible by those with a 'legitimate interest', as well as by tax authorities and regulated professionals.

"There have been calls from campaigners for trust registers to be made publicly available. This proposal falls short of this, but it is not clear how 'legitimate interest' will be defined and whether it will include NGOs or investigative journalists. If it is left to individual states to define legitimate interest we are likely to see a divergence of interpretations," said Paul Noble, tax investigations expert at Centre member **Pinsent Masons**. Registers of company ownership would be publicly accessible. The Commission said that this "will enhance public scrutiny and will contribute to preventing the misuse of legal entities for money laundering and terrorist financing purposes." Access to information about the beneficial owners of trusts will be freely accessible to the authorities and professionals subject to anti-money laundering rules, such as banks and lawyers. Trust beneficiary information will be accessible to others who can 'demonstrate a legitimate interest'. Where a trust is a beneficial owner of a company, information about the beneficial owner will be obtainable by written request, according to a Commission fact sheet. The plan is for company ownership registers maintained by each EU state to be inter-connected to facilitate cooperation and exchange of information between EU states. Member states will have to put in place verification mechanisms of the beneficial ownership information collected by the registers to help improve the accuracy of the information and the reliability of these registers.

The measures will be introduced by amending the EU's Fourth Anti-Money Laundering Directive. The changes still need to be formally endorsed by the European Parliament and the Council. EU member states will then have up to 18 months to transpose the new rules in their national legislation. *Whether the UK is obliged to make the change will depend upon the Brexit arrangements.* Since April 2016, most UK companies have been required to formally identify and keep a register of the individuals who are 'persons with significant control' (PSC) over them and to include this information in an annual return. The information on PSCs is available for public inspection. Since June last year, trustees of UK trusts and of non-UK trusts with UK tax liabilities have been obliged to maintain accurate up-to-date records of all the beneficial owners of the trust. They are required to report beneficial ownership information annually to HMRC to be kept on a UK register of trusts. The register is currently only accessible to tax and law enforcement authorities. The first information for existing trusts was to have been provided to HMRC by January 31. *However, the government recently confirmed that for the first year of operation of the* ***Trust Registration Service*** *they will not impose penalties on trustees of existing trusts so long as they have registered the trust by March 5.* However, trusts which have incurred a liability to income tax or capital gains tax for the first time in the tax year 2016-17 were obliged to register by January 5.

France: The timetable of the employee financial participation reforms desired by the government was announced. The proposals from the working groups organised by economy minister Bruno Lemaire, were published December 21 and a legislative text will be presented to the Council of Ministers in Spring. It will then be submitted to Parliament, for approval. Meanwhile, in order to contribute to the debate, **Fondact is** organising its "***Rencontres pour l'Epargne Salariale***" on **Tuesday**, **February 6.** This Meeting will be held in the grand amphitheatre, Maison de la Chimie (*28 rue Saint-Dominique* in central Paris). President Macron is invited to this event.

France: Bouygues has enacted a capital increase of €150m, inclusive of share premium, as part of its Bouygues Confiance n°9 Esop. The capital increase was reserved for employees of French companies belonging to the group, effected via a dedicated mutual fund (FCPE), the units of which will be subject to a lock-up period of five years, except where early release is allowed by law. As a result, 4,725,897 new shares were issued at a subscription price of €31.74 each. Following the capital increase, the total share capital is 363,509,283 shares with a nominal value of €1 each.

Germany: Deutsche Bank ceo John Cryan promised staff "normal" bonuses and pay increases for the first time in his two and a half years in charge. The happy news for Deutsche's bankers — confirmed by Mr Cryan in an interview with Germany's Börsen-Zeitung newspaper — is in stark contrast with 2017, which began with Mr Cryan abolishing 2016 performance-related bonuses for many senior staff. In early 2016, six months after he arrived at Deutsche, Mr Cryan presided over a 20 percent cut in the investment bank's bonus pool. "We always said that we would return to our normal system of variable compensation in 2017," Mr Cryan told Börsen-Zeitung. While Deutsche's shares were up 13 percent in the year to date by mid December, reflecting a confidence-inducing €8bn capital raising exercise and the resolution of the US mortgages issue, they fell sharply in the final two weeks of the year after the US announced tax cuts that reduced the value of corporate deferred tax assets. Credit Suisse said it would make a $2.3bn write-off as a result of the US tax changes.

US executive reward faces new tax rules

The executive compensation provisions of the US **Tax Cut and Jobs Act** are forcing public companies and tax-exempt employers to think about how to adjust to the new statutory changes, wrote US lawyer *Verrill Dana*. Tax-exempt employers face the startling new reality of a 21 percent excise tax on remuneration exceeding $1m paid to a 'covered' (senior) employee in a tax year and on severance pay in excess of certain limits paid to such employees. So far, there has been no administrative guidance from the Treasury Department, but based on preliminary analysis, tax-exempt employers may be able to mitigate (or at least manage) the sting of the new excise tax through a combination of traditional supplemental executive retirement plans and long-term incentive plans, and (where possible) well-designed non-competes that comply with the proposed regulations under Code Section 457(f) published last year. In ideal circumstances, a tax-exempt employer may be able to avoid the excise tax entirely

For years, lawmakers and regulators have struggled to rein in the multimillion-dollar pay packages earned by corporate America's top executives. Despite legislation signed in the 1990s attempting to cap C-suite pay, average salaries have more that doubled over the last 20 years, said the *Chicago Tribune*. One provision in the massive tax overhaul passed by Congress late last year attempted to place new curbs on pay. Under the measure, companies that dole out millions in performance bonuses to top executives could face a heftier tax bill.

Already, Netflix *(see separate story*) has responded by raising the salary of three top executives and dumping a short-lived programme that tied their pay to company performance. Corporate boards across the country are considering whether to do the same, said executive compensation experts.

More than a dozen companies, including AT&T, American Airlines, US Bancorp and Walt Disney have announced $1,000 bonuses for all permanent employees in response to the new Act.

Then-President Bill Clinton campaigned against excessive ceo pay and pushed a measure to cap at $1m the amount that corporations could deduct from their tax bill for top executives' compensation. But the law included a compromise: companies could still deduct tax on pay over $1m if it was performance-based. Instead of stopping the growth of executive pay, the law helped supercharge it, according to academics. Companies that paid their ceos less than $1m a year often boosted their salary and many began looking for ways to take advantage of the loophole for deducting the cost of performance-based pay, they said. In 1989, according to the left-leaning Economic Policy Institute, the median value of annual ceo compensation was $2.7m. By 1995 it was $6.6m, and it reached $13m in 2016. Jim Barrall, senior fellow in residence at the UCLA School of Law and former chair of the executive compensation practice at Latham & Watkins, said: "History proves that when the tax code has been used to limit executive compensation, it has not worked and has had unintended consequences.''

The tax deduction saved the top 20 banks $725m on performance bonuses between 2010 and 2015, according to an Institute for Policy Studies report. In 2006, then- **Securities and Exchange Commission** chief Christopher Cox told a Senate committee that the law "*deserves pride of place in the Museum of Unintended Consequences*." The 2017 tax law does away with the deduction for performance-based pay, potentially steering $9.3bn to federal coffers over the next ten years, according to the Joint Committee on Taxation. But compensation experts say the change in tax law is not likely to reverse years of upward pressure on executive pay. *If anything, companies are likely to make such pay less dependent on performance-based bonuses and give executives a higher salary, they say. Some companies are already adjusting their policies.*

USA: Goldman Sachs accelerated the delivery of stock bonuses to top executives by a few weeks. Ceo Lloyd Blankfein and hundreds of other executives received the shares - which they had already been awarded in prior years - in December rather than January. Transferring the shares in 2017 allows the company to take a deduction while the statutory tax rate is higher, 35 percent, rather than the lower 21 percent corporate tax rate put in place for 2018. The strategy, which the company disclosed in SEC filings, aim to save the bank $140m.

USA: Netflix began offering stock-based bonuses to three of its top executives in 2015, taking advantage of the tax deduction. Last week, the company said it would ditch the bonuses and increase the annual salary for its executives this year. Last year, Netflix's chief content officer Ted Sarandos earned a $1m salary and a bonus target of $9m. This year, his base salary will be raised to ***$12m***, according to a SEC filing. *"The compensation committee of the board of directors has determined that all cash compensation for 2018 will be paid as salary,"* the filing said. The new tax law's signature feature - lowering the corporate tax rate from 35 percent to 21 percent - more than offsets the loss of the deduction, compensation experts said.

USA: Tesla founder **Elon Musk** has been set one of the toughest bonus plans ever – increasing the $59bn electric car maker's market value to $650bn (£466bn) in a decade. However, if he succeeds he would get one of the biggest windfalls ever received by a ceo – worth about **$7.2bn** at today's prices, but almost **$70bn** assuming all the targets are hit. California-based Tesla revealed the scheme in a regulatory filing that notes that the billionaire will not receive any guaranteed pay at all. Tesla said: "Elon's only compensation will be a 100 percent at-risk performance award, which ensures that he will be compensated only if Tesla and its shareholders do extraordinarily well." For each of the total of 12 performance milestones achieved, Mr Musk will see stock options vest equal to one percent of Tesla's outstanding shares. At the current share price of $351, each milestone is worth almost $600m. For the awards to vest, Mr Musk must remain ceo or executive chairman and chief product officer. He owns about 20 percent of Tesla shares.

USA: Walmart plans to give its one million workers a $1,000 bonus each and start paying them at least $11 an hour. The move by the world's biggest retail store group (which includes **Asda** in the UK) follows last December's US tax code overhaul that slashed the corporate rate from 35 percent to a flat 21 percent. Hourly-paid employees will get the higher rate from February. Walmart last raised the minimum wage to $9 an hour in 2015 and the following year offered a $1 rise to those who completed an internal training scheme. The chain plans to expand maternity and parental leave benefits too.

USA: Houston-based **Waste Management** will pay a $2,000 bonus to 34,000 North American employees who are not on a bonus structure or sales incentive plan. Most who will receive the bonuses are hourly workers. The company said it was handing out the bonuses "in light of the meaningful contributions of its employees and the new US corporate tax structure. We are about to get a tax benefit as our US corporate tax rate goes from 35 percent to 21 percent. In considering how to best spend that, we wanted to find a way to help grow our economy, which in turn, will help grow our business, and give some of the tax savings back to those hardworking employees who do not get the opportunity to participate in our salaried incentive plans," said Jim Fish, president and ceo, Waste Management.

South Africa: Sasol Khanyisa, a R21bn broad-based black economic empowerment (BEE) ownership structure, was granted formal approval by Sasol shareholders. "Sasol Khanyisa will be implemented from June 2018 and we believe [it] will realise sustainable and long-term value for black South African shareholders," said Sasol joint ceo **Bongani Nqwababa**. The programme is intended to achieve effective direct and indirect BBBEE ownership of at least 25 percent in Sasol South Africa, a wholly-owned subsidiary of Sasol SA houses Sasol's most cash generative assets, which include its synthetic fuels, chemicals and gas businesses. Eligible, existing Sasol Inzalo groups and public shareholders will receive bonus Sasol BEE ords (SOLBE1) that trade on the BEE segment of the JSE, at no additional cost to them. These bonus SOLBE1 and additional SOLBE1 shares issued to shareholders will be tradable on June 2 2018, realising immediate value creation for shareholders. Sasol Inzalo, which was created in 2008, comes to an end this year. Eligible participants in Sasol Khanyisa will comprise Sasol's qualifying employees, existing Sasol Inzalo public and group shareholders, and black Sasol shareholders who own shares listed on the empowerment segment of the JSE. Black members of the public participated in Sasol Inzalo through 54 different groups. In addition, more than 200,000 members of the South African black public participated in the Inzalo public funded element and Sasol Ltd has more than 50,000 SOLBE1 shareholders. Around 23,000 Sasol employees participated in the Sasol Inzalo employee trusts. This month, eligible participants will be invited to keep SOLBE1 shares on the empowerment segment of the JSE, instead of converting to Sasol ords, and should they elect to keep the SOLBE1 designation, shareholders will receive one bonus SOLBE1 share for every four SOLBE1 shares owned and will be invited to participate in Sasol Khanyisa. Thereafter, in April, eligible SOLBE1 shareholders and Sasol Inzalo groups and public funded shareholders will be invited to participate in Sasol Khanyisa, receiving one Sasol Khanyisa share for every Sasol Inzalo share held and one Sasol BEE ord for every ten Sasol Khanyisa shares held.

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.